

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>DONNA CURLING, ET AL.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>CIVIL ACTION</b>
<b>vs.</b>	)	
	)	<b>FILE NO. 1:17-cv-2989-AT</b>
<b>BRAD RAFFENSPERGER,</b>	)	
<b>ET AL.,</b>	)	
	)	
<b>Defendants.</b>	)	

**PLAINTIFFS' RESPONSES TO DOCKET ENTRY ORDERS**

Plaintiffs file this Response to the Docket Entry Order issued by the Court at 11 a.m. on July 8, 2019 (the "State Facilities Order") and the Docket Entry Order issued by the Court at 4 p.m. on July 8, 2019 ("the Phase I Production Order").

**A. Response to State Facilities Order**

Per the Court's July 7, 2019 Minute Order, Plaintiffs contacted State Defendants regarding the conditions they described in Document 456. Those conditions confirm the unworkability of State Defendants' proposal for the critical analysis and review Plaintiffs need to conduct regarding the GEMS databases for this case. The substantial relevance of those databases is undisputed.

*First*, Defendants confirmed that Plaintiffs’ attorneys and experts will have access to the facility only between the hours of 8 am and 5 pm, only for five days, and only on “business days,” which apparently are limited to weekdays.

Defendants have not identified any specific dates for their proposal, but regardless, it is unworkable for the reasons Plaintiffs previously described, including in yesterday’s filing (Dkt. No. 455). The parties are in the midst of intense discovery involving a number of depositions, document discovery, and written discovery, as well as briefing on the pending preliminary injunction motions and preparing for a two-day hearing on those motions. Even if Plaintiffs’ attorneys and experts were available in the near term to be in Atlanta for five full days—which they are not due to other commitments in this case and others—they cannot possibly disappear into a Georgia state facility for five straight days to perform the review and analysis needed on the GEMS databases in the time remaining before the July 25-26 hearing, much less before Plaintiffs’ Reply is due on July 17.

Rather, Plaintiffs’ attorneys and experts need to be able to conduct that critical analysis during windows of time they have available, as with any obligations, which means doing it, for example, at night after depositions, during pockets of time on weekends, and for a few hours between obligations some days with longer days (much more than the nine hours Defendants propose for a single

day) devoted to this other times. Defendants' proposal would force Plaintiffs' attorneys and experts to choose between conducting as much analysis as they can in the window Defendants provide—whenever that will be—and forgoing other important discovery and preparation efforts for the July 25-26 hearing, or forgoing important analysis of the GEMS databases. This would be highly prejudicial and is wholly unnecessary and unreasonable.

*Second*, even now Defendants cannot articulate what would be required of Plaintiffs' attorneys and experts to access the facility whenever they are able during the window Defendants have proposed. All Defendants could say is that Plaintiffs' attorneys and experts "will either be given access by SOS personnel" or Defendants "would work out a temporary card-key system." Relying on "SOS personnel" for access each time Plaintiffs need access to the facility undoubtedly would be problematic and impede the analysis needed. Moreover, if Plaintiffs' attorneys and experts can be trusted to have their own "temporary card-key" to access the facility, surely they can be trusted to maintain the GEMS databases securely at their own respective facilities as proposed in great detail. Defendants still have not identified a single vulnerability or specific risk with any aspect of the security measures Plaintiffs have proposed.

*Third*, Defendants confirmed that “Secretary of State IT personnel would be in the room” while Plaintiffs’ attorneys and experts conduct the review and analysis needed for the GEMS databases. This not only is wholly unnecessary and unreasonable, it violates the fundamental work product privilege that applies to that review and analysis—and it would cripple that analysis. Plaintiffs’ attorneys and experts could not discuss the GEMS databases in the room where they could reference specific data and fields with employees of State Defendants overhearing those discussions. The work Plaintiffs’ attorneys and experts would be performing would be visible to employees of State Defendants—exactly as State Defendants intend.

In short, Plaintiffs’ attorneys and experts would be required to share with State Defendants in real time privileged analysis, communications, legal strategy, and more, all of which is beyond the bounds of discovery. Thus, Plaintiffs’ attorneys and experts would have yet another unfair choice to make—either suffer the extreme prejudice that inevitably will result from such disclosure to State Defendants or forgo any discussion in the room where the GEMS databases and data will be and curtail the review and analysis that could be performed in the room. Again, this is not necessary, reasonable, or consistent with Rule 26.

Plaintiffs have identified specific protocols to enable critical review and analysis of the GEMS databases under secure conditions. Defendants have not identified even one flaw or specific risk with any of those proposed conditions. Rather, they merely reflexively reject any proposal beyond their own, insisting on any review and analysis occurring at their facility, during their normal working hours, under the watch of their employees. They have cited no authority to support such extraordinary and unprecedented conditions. Plaintiffs' attorneys and experts have managed to keep secure malware that can be used to alter election results in Georgia using the DREs they still use for elections—that malware is exponentially more sensitive than the GEMS databases or the data within them. Surely Plaintiffs' attorneys and experts can be trusted to secure the GEMS databases and any truly confidential data within them. Defendants have fallen far short of *their burden* to prove otherwise.

**B. Response to Phase I Production Order**

Plaintiffs' counsel and Plaintiffs' experts Alex Halderman and Matthew Bernhard conferred by telephone with counsel for the State Defendants on July 9, 2019. The State Defendants did not include their own expert or any employee of the Secretary of the State on the call, and their counsel unfortunately admitted they

have very limited information about the GEMS databases and the purported security concerns.

The State Defendants are unwilling at this time to produce any Phase I data, even after Plaintiffs suggested excluding two fields from the production (24 and 27).<sup>1</sup> The State Defendants do not contend that all the other fields Plaintiffs identified contain confidential information.<sup>2</sup> Rather, they object that even the narrow production proposed in Phase I would disclose the “relationships” between certain information in the databases. The State Defendants maintain that these relationships are sensitive because they are unique to Georgia, but they could not identify even one specific relationship that is unique to Georgia or why their disclosure would cause harm. In fact, they could not identify even one aspect of the GEMS databases that is actually unique to Georgia. They admitted they have not even reviewed the public version of a GEMS database from Cobb County in Georgia that Plaintiffs have directed them to multiple times to determine whether there is any aspect of the GEMS databases Plaintiffs seek that is actually unique to

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<sup>1</sup> Upon further reflection, Plaintiffs’ experts believe that field 24 may be needed for the analysis they are doing and see no confidentiality issue with that field—nor did State Defendants articulate any specific confidentiality concern on the teleconference.

<sup>2</sup> State Defendants vaguely raised a confidentiality concern with field 51, but Plaintiffs’ experts explained the need for this field.

Georgia or confidential at all. In short, the teleconference confirmed that State Defendants have no factual basis for their unsubstantiated allegations that GEMS databases in Georgia are unique and so sensitive as to require the draconian restrictions they propose for critical review and analysis by Plaintiffs' attorneys and experts.

The GEMS database is composed of a collection of tables, each of which is structured like a spreadsheet, consisting of rows of data under several named columns. A row in one table can contain a numeric value referencing a row in another table. To illustrate these relations, Plaintiffs have attached hereto as Exhibit A three screen shots prepared by Dr. Halderman from Cobb County's GEMS database for the 2002 election, which is *publicly available* on line. The first screen shows the table "CandVGroup" and shows that Candidate number 458 is associated with Race 158. The next screen shot shows the table "Race", which indicates that Race 158 is the Governor's race. The next screen shot shows the table "Candidate", which shows that Candidate 458 is Roy Barnes. In reviewing the information from the database, it is obviously essential to have the relationship between these pieces of information. A list of candidates, or a list of races, without the data describing the relationship between these lists is not useful.

Plaintiffs' experts confirmed on the teleconference with State Defendants that these sorts of relationships would have to be disclosed for the production to be useful. State Defendants refused, and yet could not offer any reason why such relationships are so sensitive as to require their proposed restrictions on the necessary review and analysis.

The State Defendants have had this discovery since March 27, 2019, and remain unable to explain how or why any of the information that they are being asked to produce is confidential. The State Defendants should be directed to produce the Phase I data without restriction immediately, with the exception of field 27 (and 24, if the Court determines that is necessary).

Respectfully submitted this 9th day of July, 2019.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to LR 7.1(D), I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

/s/ Bruce P. Brown  
Bruce P. Brown

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused the foregoing to be served upon all other parties in this action by via electronic delivery using the PACER-ECF system.

This 9<sup>th</sup> day of July, 2019.

/s/ Bruce P. Brown  
Bruce P. Brown

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CandVGroup									
Table Tools									
Tell me what you want to do...									
File Home Create External Data Database Tools Fields Table									
View	Paste	Cut	Filter	Ascending	Selection	Refresh	New	Totals	Replace
Clipboard	Copy	Format Painter	Descending	Advanced	Save	Records	Go To	Find	Find
Sort & Filter	Remove Sort	Toggle Filter	Remove Sort	Toggle Filter	Delete	More	Select	Size to Fit	Switch Windows
READ-ONLY This database has been opened read-only. You can only change data in linked tables. To make design changes, save a copy of the database.									
All Acc...	KeyId	SortSeq	RaceId	CandidateId	RotGroup	VGroupId	OnBallot	Wi	
BaseunitVReg	454	10	157	454	1	0	1		
Candidate	455	20	157	455	1	0	1		
CandidateCou...	456	30	157	456	1	0	1		
CandVGroup	457	40	157	457	0	0	1		
Card	458	10	158	458	1	0	1		
CardRot	459	20	158	459	1	0	1		
CardRotCounter	460	30	158	460	1	0	1		
ChallengeVoter	461	40	158	461	0	0	1		
CounterBatch	462	10	159	462	1	0	1		
CounterGroup	463	20	159	463	1	0	1		
CounterGroup...	464	30	159	464	1	0	1		
	465	40	159	465	0	0	1		
	466	10	160	466	1	0	1		
	467	20	160	467	1	0	1		
	468	30	160	468	1	0	1		
	469	40	160	469	0	0	1		
	470	10	161	470	1	0	1		
	471	20	161	471	1	0	1		
	472	30	161	472	0	0	1		
	473	10	162	473	1	0	1		
	474	20	162	474	1	0	1		
	475	30	162	475	1	0	1		

The Race Table Shows that Race 158 is the Governor's Race

Table Tools

Race - Access

File Home Create External Data Database Tools Fields Table Tell me what you want to do...

View Paste Copy Format Painter Filter Ascending Descending Remove Sort Toggle Filter Refresh All New Save Delete More Find Replace Go To Select Size to Fit Form Switch Windows Calibri B I U A

Views Clipboard Sort & Filter Records Find Window

READ-ONLY This database has been opened read-only. You can only change data in linked tables. To make design changes, save a copy of the database. Save A

All Acc...	KeyId	Label	SortSeq	RaceType	RotationType	RotationFlag	DistrictId	RotDistrictId
	0	<NO PREFEREN	-1	0	0	0		-1
	1	<NO ENDORSEM	0	0	0	0		-1
Language	157	US SENATE	10	1	0	0		66
MonitorScript	158	GOVERNOR	20	1	0	0		66
Operator	159	LT GOVERNOR	30	1	0	0		66
Plate	160	SECRETARY OF	40	1	0	0		66
PlateHeader	161	ATTORNEY GEN	50	1	0	0		66
	162	COMMISSIONE	60	1	0	0		66
	163	COMMISSIONE	70	1	0	0		66
	164	STATE SCHOOL	80	1	0	0		66
	165	COMMISSIONE	90	1	0	0		66
	166	PUBLIC SERVICE	100	1	0	0		66
	167	PUBLIC SERVICE	110	1	0	0		66
	168	US REP 5TH DI	120	1	0	0	1073741980	
	169	US REP 6TH DI	130	1	0	0		3
	170	US REP 11TH DI	140	1	0	0		4
Preference	171	STATE SENATE	150	1	0	0	1073741983	
Race	172	STATE SENATE	160	1	0	0		6
RaceCounter	173	STATE SENATE	170	1	0	0		7
Region	174	STATE SENATE	180	1	0	0		8
ReportingSet	175	STATE SENATE	190	1	0	0		9
ReportingSetR...	176	STATE SENATE	200	1	0	0		10
	177	STATE REP 17TH	210	1	0	0	1073741984	
	178	STATE REP 26TH	220	1	0	0	1073741985	
	179	STATE REP 28TH	230	1	0	0	1073741986	
	180	STATE REP 29TH	240	1	0	0		12

The Candidate Table shows Roy Barnes is Candidate 458

Candidate - Access									
Table Tools									
File Home Create External Data Database Tools Fields Table Tell me what you want to do...									
View	Cut	Copy	Format Painter	Filter	Ascending	Descending	Selection	Advanced	Remove Sort
Views	Paste	Format Painter	Filter	Sort & Filter	Refresh	Save	Spelling	Find	Replace
	Clipboard				Records	Records	Records	Find	Find
READ-ONLY This database has been opened read-only. You can only change data in linked tables. To make design changes, save a copy of the database. Save As ...									
All Acc...	KeyId	Label	RaceId	CandidateTy	SortSeq	NumCandVG	ExportId		
Search...	454	MAX CLELAND		0	10				
	455	SAXBY CHAMBL		0	20				
BallotRotRace...	456	CLAUDE THOM.		0	30				
	457	Write-in		1	40				
BaseunitBallot...	458	ROY E. BARNES		0	10				
	459	SONNY PERDUE		0	20				
BaseunitDistrict	460	GARRETT M. H		0	30				
	461	Write-in		1	40				
BaseunitVReg	462	MARK TAYLOR		0	10				
	463	STEVE STANCIL		0	20				
Candidate	464	HERBERT GALL		0	30				
	465	Write-in		1	40				
CandidateCou...	466	CATHY COX		0	10				
	467	CHARLIE BAILEY		0	20				
CandVGGroup	468	MIKE PITTS		0	30				
	469	Write-in		1	40				
Card	470	THURBERT BAK		0	10				
	471	SHANNON GOE		0	20				
CardRot	472	Write-in		1	30				
	473	TOMMY IRVIN		0	10				
CardRotCounter	474	DEANNA STRICI		0	20				
	475	DOUG MORTON		0	30				
ChallengeVoter	476	Write-in		1	40				
	477	LOIS COHEN		0	10				
CounterBatch									